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JUSTICE BY ESTEE.

Judge Estee's decision in the habeas corpus case is a treat to the loyal American mind following as it does upon the surf of judicial legislation, excuses, expedients and warping of justice to which two law students of the Territorial Supreme Court have treated the citizens of Hawaii. Judge Estee holds true to the mark set by him when first assuming office in the Territory, true to the principle announced by him as the guide of his judicial acts—"that American law is common justice."

The decision rendered today reads like a magna charta to the loyal people of this Territory who have so long witnessed the prostitution of justice for no other reason than that factional rulers dislike and are determined not to face the American issue. Judge Estee admits the "peculiarities" of the local situation; a string that has been harped on till it is worn to a frazzle. But he does not evade his duty; he does not set aside the requirements of his oath of office. Judge Estee meets the issue manfully as true Americans have met every issue. He centers his mind on the rendition of justice without fear or favor. He recognizes that the rights of personal liberty guaranteed and guarded by the Constitution are the foundation of our nation's virtues. And he proceeds to grant those rights.

Judge Estee's decision speaks for itself and the Bulletin commends its careful reading to every citizen of this Territory. Aside from its effect upon the prisoner at the bar, it has a deeper and more potent lesson to Americans of this new possession. The power of the Constitution is here, not to be trod under foot and scorned, but to rise triumphant and bury the puny opponents of its operations in the dust heap of insignificant despair.

JUDGE ESTEE STANDS BY THE CONSTITUTION

(Continued from page 1.)

ed States, . . . shall remain in force until the Congress of the United States shall otherwise determine." (Vol. 39, U. S. Stats. 759.)

"The rule of law by which a particular district, community or nation is governed." 11 Blackstone's Comm. 41; 1 Kent's Comm. 147; 2 Burdell's Law Dictionary 215.)

Annexation Was Complete

The Resolution of Annexation of the Hawaiian Islands as passed by Congress prescribes that "they are annexed as a part of the Territory of the United States and are subject to the sovereign dominion thereof," and on August 12th, 1898, the American flag was raised on the islands. It matters not technically whether the Constitution followed the flag or followed American sovereignty here, for with it came all of American law not especially reserved by the Joint Resolution of Annexation. It goes without saying that two sovereignties could not exist here at the same time, and when the Resolution of Annexation provided that "the municipal legislation of the Hawaiian Islands not inconsistent with this Joint Resolution not contrary to the Constitution of the United States should remain in force," it meant that all municipal legislative enactments of the Republic of Hawaii contrary thereto should be abrogated. No reservation was made in the Joint Resolution of Articles V, VI and VII of the Amendments to the Constitution, relating to indictments or trial by jury, in common law criminal cases. It showed that American sovereignty not only prevailed here, as elsewhere in the Territories of the United States, but that nothing could be done or permitted here contrary to the Constitution of the United States, excepting as expressly provided in the Joint Resolution of Annexation. This annexation was not as claimed by the Supreme Court of the Territory in the case of Peacock vs. Republic of Hawaii (12 Haw. 33) in a transition or inchoate state, but was complete, and the Constitution came with annexation and became the supreme law of this Territory. This is of paramount interest to the people of this Territory, as it secures to all the equal protection of life, liberty and property which are fundamental rights, and chief among which is the trial by jury.

It appears that the petitioner was indicted for the crime of murder under an indictment presented by the prosecuting officer of the Territory and found by the Circuit Judge of the Circuit Court under the provision of section 616 of the Penal Laws of 1897 of the Republic of Hawaii, which reads as follows:

"The necessary bills of indictment shall be prepared by a legal prosecuting officer and be duly presented to the presiding judge of the court before the arraignment of the accused, and such judge shall, after examination, certify upon each bill of indictment, whether he finds the same a true bill or not."

The petitioner was then tried upon the said indictment and verdict of conviction of manslaughter was rendered by nine out of the twelve jurors who heard the case in accordance with section 1245 of the Civil Laws of 1897 of the Republic of Hawaii, which prescribes as follows:

"No jury for the trial of any case, civil or criminal, shall be less than twelve in number, but when nine of such jury shall agree upon a verdict they may render the same, and such verdict shall be as valid and binding upon the parties as if rendered by all twelve."

The questions then presented are: Were the provisions of the Penal and Civil Laws of the Republic of Hawaii under which this petitioner was indicted, tried and convicted "Municipal legislation contrary to the Constitution of the United States?" or, in other words,

"Could a person in the Territory of Hawaii, between the 7th day of July, 1898, and the 14th day of June, 1900, when the Act for the government of the Territory of Hawaii went into effect, be legally tried for an infamous crime without having been first indicted by a Grand Jury as required by Article V of the Amendments to the

Constitution of the United States, or convicted by less than a unanimous verdict of twelve jurors, as provided by Articles VI and VII of said Amendments?"

Article V of the Constitution of the United States reads in part as follows: "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury."

Too Plain for Doubt. Even if this constitutional provision had never been construed, the language is too plain for doubt.

It has been held by the Supreme Court of the United States that the Fifth and Sixth Amendments to the Constitution were not designed as limits upon the State Governments in reference to their own citizens, but are only restrictions upon the Federal power. (Harron vs. Baltimore, 7 Peters 243; Thornton vs. Montgomery, 147 U. S. 490.)

The Hawaiian Islands were territory of the United States, "subject to the sovereignty thereof" and under the control of Congress when the original proceedings in this matter were heard before the Circuit Court of the Territory. (Joint Resolution of Annexation.)

Mr. Justice Bradley held in the case of the Mormon Church vs. United States, 136 U. S. 1:

"That the power of Congress over the Territories of the United States is general and plenary arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States."

"It would be absurd to hold that the United States had power to acquire territory and no power to govern it when acquired."

"To the same point let me add it was recently decided in the case of Downes vs. Bidwell, 181 U. S. 779, quoting with approval from the decision of Chief Justice Marshall in McCulloch vs. Maryland, 4 Wheaton 316:

"That the power over the Territories is vested in Congress without limitation and this power has been considered the foundation upon which the Territorial Government rests."

As to Territorial authorities on questions of the Territories being subject to Federal provisions, see Bradford vs. Terr., 1 Okl. 369; Walker vs. N. M. R. Co., 7 N. Mex. 282.

In the exercise of the plenary power conferred upon it, Congress provided that all municipal legislation of the Republic of Hawaii "contrary to the Constitution of the United States" should be repealed, leaving in force all that was not in conflict therewith.

Intention of Congress. No language could be plainer. I am constrained to hold that it was the intention of Congress to extend the Constitution save as limited by the other provisions of the Joint Resolution over these islands, and any other construction would be a straining after that which does not appear in the language of the Act.

As was said by the Supreme Court of the United States in the recent Insular case (Downes vs. Bidwell, 181 U. S. 781):

"When the Constitution has been once formally extended by Congress to the Territories, neither Congress nor the Territorial Legislature can enact laws inconsistent therewith. And if Congress cannot control the constitutional rights of citizens after they have once been extended to them in the Territories, how can the Territories themselves do this through their courts or otherwise?"

See Thompson vs. Utah, 170 U. S., where the Court, at page 349, says:

"Assuming that the provisions relating to trials for crimes and to criminal prosecutions apply to the Territories of the United States, the next inquiry is, whether the jury referred to in the original Constitution and in the Sixth Amendment thereto is a jury constituted as it was at common law of twelve persons, neither more nor less. . . . This question must be answered in the affirmative."

Quoting approvingly from Springfield vs. Thomas, 166 U. S. 707, where the Court says:

"In our opinion the Seventh Amendment secured unanimity in finding a verdict, as an essential feature of trial by jury in common law cases, and the Act of Congress could not impart the power to change the constitutional rule and could not be treated as attempting to do so."

And again on page 355 (Thompson vs. Utah supra) the Court says:

"The Constitution of the United States gave the accused at the time of the commission of the offense a right to be tried by a jury of twelve persons, and made it impossible to deprive him of his liberty except by the unanimous verdict of such jury."

See also Webster vs. Reid, 11 Haw. 457; 460 American Publish Co. vs. Fisher, 166 U. S. 464, 468.

The finding of a true bill by a Circuit Judge or in any other manner than by the indictment of a Grand Jury properly and legally empowered to act in the premises, is in direct violation of the provisions of Article V of the Amendments to the Constitution of the United States, and any person found guilty of an infamous crime without such indictment by a Grand Jury is illegally convicted and should be released on habeas corpus. (Ex parte Baer, 121 U. S. 1; Ex parte Parks, 93 U. S. 18; Callon vs. Wilson, 127 U. S. 540.)

Limit the Constitution. It is fallacious to attempt to limit the force of the Constitution in this Territory or in view of the clear intent of the Resolution of Annexation to curtail the constitutional rights of the citizen. The pointing out to the people as the Supreme Court of the Territory has done that the Constitution "is not here in all its fullness," without stating what parts are and what parts are not here, simply begs the question; and the argument of the Assistant Attorney General of the Territory that trial by jury is not one of the fundamental propositions of the Constitution is contrary to the settled opinions of such illustrious American jurists as Marshall, Story and Kent, and also of the leading American statesmen who assisted in framing these amendments to the Constitution.

The history of the trial by jury is the history of English and American civilization. It has come down to us from Magna Charta, and in criminal cases every presumption is in favor of sustaining it.

I am of the opinion that the proceedings in the Territorial courts of Hawaii for the indictment and conviction of the petitioner here in were contrary to law and void, and that he is entitled to be discharged on habeas corpus.

Let the prisoner be discharged. ESTEE, Judge.

Dated, September 12th, 1901.

Gulstan vs. Kauai is still on before Judge Little today.

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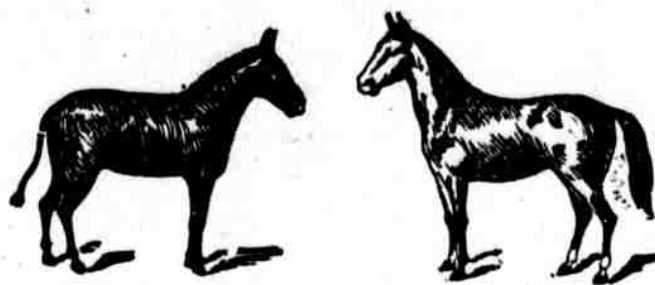
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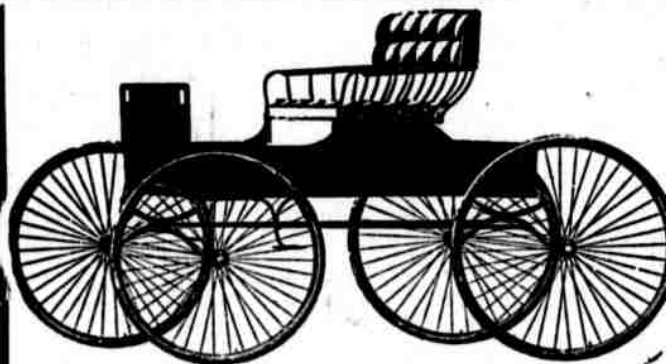
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